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IN THE

Supreme Court of the United States

October Term, 1945.

No. 405.

CHARLES SWANSON,
Petitioner,

v.

MARRA BROTHERS, INC.,
Respondent.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

Brief for Respondent.

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IN THE

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No. 405.

CHARLES SWANSON,

Petitioner,

v.

MARRA BROTHERS, INC.,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR RESPONDENT.

This case comes before the Court on writ of certiorari issued to review a final judgment of the United States Circuit Court of Appeals for the Third Circuit.

OPINIONS BELOW.

The opinion of the District Court of the United States for the Eastern District of Pennsylvania sur respondent's Motion to Dismiss Complaint was filed by the Honorable Guy K. Bard on October 16, 1944 (R. 9) and is reported in 57 F. Supp. 456.[1]

[1] Petitioner on page 3 of his brief states under "The Opinions of the Courts Below" that "The Court" (Judge Bard) "recognized that longshoremen must be construed as seamen within the meaning of the Jones Act.". We do not so read Judge Bard's opinion. In the two places where this particular phase of the case was discussed by Judge Bard, he used the following language:

"Following the passage of the Jones Act in 1920, the Supreme Court held that a stevedore employed in maritime

The opinion of the United States Circuit Court of Appeals for the Third Circuit was filed on June 13, 1945 (R. 18) and is reported in 149 F. (2d) 646. Said opinion, which affirmed the judgment of the Court below for the reasons set forth in the aforesaid opinion of Judge Bard, was a per curiam opinion of Circuit Judge Martin, Circuit Judge McLaughlin, and District Judge Kalodner.

JURISDICTION.

The jurisdiction of this Court has been invoked by petitioner under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, § 1, 43 Stat. 938 (28 U. S. C. A. § 347-(a)) and Article III, Section 2 of the Constitution of the United States.

COUNTER-STATEMENT OF QUESTION PRESENTED.

The petitioner in his Specifications of Error assigns five errors and presents three points in his Argument. We think that there is only one point in this case and that the following Counter-Statement of Question Presented covers the sole issue in controversy:

Where a stevedore is injured while working on a pier, is not his right of recovery against his employer limited exclusively to compensation payable under the state workmen's compensation act?

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work *on navigable water*' was a 'seaman' within the meaning of the Act. International Stevedoring Co. v. Haverty, 272 U. S. 50, 71 L. Ed. 157." (Italics ours.) (R. 12.)

"That the Supreme Court recognized that a distinction may well be made between a seaman who is a crew member and is traditionally entitled to maintenance and cure under the maritime law, and a longshoreman who has been construed to be a 'seaman' under the Jones Act, *at least to the extent that he works on navigable water*, is obvious from its final remarks in its opinion in the O'Donnell case. . . ." (Italics ours.) (R. 15.)

SUMMARY OF ARGUMENT.

A stevedore injured while working on a pier is only entitled to compensation under the local state workmen's compensation act and has no remedy against his employer under the Jones Act.

This precise question has been well established by decisions of this Court. *State Industrial Commission of the State of New York v. Nordenholt Corporation*, 259 U. S. 263 (1922); *T. Smith & Son, Inc. v. Taylor*, 276 U. S. 179 (1928); *Nogueira v. New York, New Haven & Hartford R. Co.*, 281 U. S. 128, 133 (1930); *South Chicago Coal & Dock Co. v. Bassett*, 309 U. S. 251 (1940).

Congress never intended to extend to stevedores any rights under the Jones Act. Although this Court in the case of *International Stevedoring Company v. Haverty*, 272 U. S. 50 (1926) held that a stevedore *when injured on a vessel* could maintain a suit under the Jones Act, the decision was made because of the then existing lack of effective federal legislation for stevedores *injured on a vessel*, and furthermore said decision was contrary to the intent of Congress. The "judicial legislation" of the *Haverty* case did not extend such a right to stevedores *when injured on a pier* since they already had the protection of state compensation acts. Furthermore, Congress by the enactment of the Longshoremen's and Harbor Workers' Act shortly after the *Haverty* case showed that it never intended stevedores to be included within the coverage of the Jones Act.

Since stevedores have no right under the Jones Act, the case of *O'Donnell v. Great Lakes Dredge & Dock Co.*, 318 U. S. 36 (1943), which permitted a seaman to recover under the Jones Act for injuries sustained on a pier, has no application to instant case.

ARGUMENT.

I. A Stevedore Injured While Working on a Pier Is Only Entitled to Compensation Under the State Workmen's Compensation Act and Has No Remedy Against His Employer Under the Jones Act.

It has been well established for years by decisions of your Honorable Court that when a stevedore or longshoreman is injured while working on a pier, his recovery is under the local state workmen's compensation act.

As the facts set forth in petitioner's Complaint fall squarely within the holdings of these decisions, the Courts below properly sustained the respondent's Motion to Dismiss.

The petitioner, a longshoreman, was injured while he was working on the pier at which the SS. Meyer London was berthed. (R. 2.) He was engaged in hooking or unhooking cases which were being hoisted to the deck of the vessel. (R. 2.) A life raft became loosened from its moorings and fell down over the ship's railing to the pier below, striking the plaintiff who was stationed on the pier. (R. 2.) Thus, there can be no question from the petitioner's allegations contained in his Complaint that, when injured, the petitioner was working on the pier as distinguished from working on the vessel.

Furthermore, as stated in the affidavit attached to the Motion to Dismiss (which was not denied or contradicted), the petitioner pursuant to the provisions of The Pennsylvania Workmen's Compensation Act (Act of June 21, 1939, P. L. 520; 77 P. S. § 1 et seq.) entered into an open compensation agreement with his employer (the respondent herein) and its insurance carrier for the maximum compensation. (5a.) Said agreement was duly filed with and approved by the State Bureau of Workmen's Compensation as required by said statute and became binding on all parties. The petitioner at the time of the within proceedings was still

receiving compensation thereunder and no proceedings were instituted to modify or terminate the same. (6a.)

(a) The Question Presented Has Already Been Adjudicated by Well-Established Decisions of This Court.

The very question now raised by the petitioner was decided by your Honorable Court in the case of *State Industrial Commission of the State of New York v. Nordenholt Corporation*, 259 U. S. 263 (1922). In that case the plaintiff's son died from injuries which he received as a longshoreman while working on the pier and engaged in unloading a vessel which was lying in navigable waters. Your Honorable Court held that when an employee engaged in unloading a vessel was injured on the pier, the local law, the New York Compensation Act, was applicable to the case, and said:

> "When an employee, working on board a vessel in navigable waters, sustains personal injuries there, and seeks damages from the employer, the applicable legal principles are very different from those which would control if he had been injured on land while unloading the vessel. In the former situation the liability of employer must be determined under the maritime law; in the latter, no general maritime rule prescribes the liability, and the local law has always been applied. The liability of the employer for damages on account of injuries received on shipboard by an employee under a maritime contract is matter within the admiralty jurisdiction; but not so when the accident occurs on land." (pp. 272, 273.)
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> "Insana was injured upon the dock, an extension of the land, *Cleveland Terminal & Valley R. R. Co. v. Cleveland S.S. Co.*, 208 U. S. 316, and certainly prior to the Workmen's Compensation Act the employer's liability for damages would have depended upon the

common law and the state statutes. Consequently, when the Compensation Act superseded other state laws touching the liability in question, it did not come into conflict with any superior maritime law." (pp. 275, 276.)

This rule of the *Nordenholt* case was subsequently reaffirmed in *T. Smith & Son, Inc., v. Taylor*, 276 U. S. 179 (1928). In the *Smith* case a stevedore was engaged in unloading cargo. While standing upon a stage which was resting on the wharf, he was struck by a sling which was loaded with cargo and which was attached to the vessel. He was knocked into the water, where some time later he was found dead. The stevedoring company argued that the deceased was engaged in a maritime occupation when he was knocked from the wharf and that, therefore, he had no rights under the Louisiana Workmen's Compensation Act because it was an invasion of the admiralty jurisdiction and that the plaintiff's remedy was under federal law and not under the state workmen's compensation act. The Court, however, rejected this argument and affirmed the principle that the state workmen's compensation act is applicable if the injury to the stevedore occurs on land. The Court said on page 181:

"Deceased was engaged in maritime work under a maritime contract. If the cause of action arose upon the river, the rights of the parties are controlled by maritime law, the case is within the admiralty and maritime jurisdiction, and the application of the Louisiana Compensation Law violated § 2 of Art. 3. But, if the cause of action arose upon the land, the state law is applicable. *The Plymouth*, 3 Wall. 20, 33; *Atlantic Transport Co. v. Imbrovek*, 234 U. S. 52, 59; *Southern Pacific Co. v. Jensen*, 244 U. S. 205; *Knickerbocker Ice Co. v. Stewart*, 253 U. S. 149; *Washington v. Dawson & Co.*, 264 U. S. 219."

The stevedoring company in the *Smith* case tried to distinguish the *Nordenholt* case on the ground that the death in that case had occurred on the pier, whereas the death in the *Smith* case occurred in the river from drowning. This distinction was brushed aside by your Honorable Court as being without merit, saying:

> "It" (the stevedoring company) "argues that as no claim was made for injuries sustained while deceased was on land and as the suit was solely for death that occurred in the river, the case is exclusively within the admiralty jurisdiction. But this is a partial view that cannot be sustained. The blow by the sling was what gave rise to the cause of action. It was given and took effect while deceased was upon the land. It was the sole, immediate and proximate cause of his death. The *G. R. Booth*, 171 U. S. 450, 460. The substance and consummation of the occurrence which gave rise to the cause of action took place on land." (Page 182.)

The rulings in the *Nordenholt* and *Smith* cases state what has always been the accepted understanding of the law. This principle has been uniformly applied by trial and appellate courts without exception and has been reaffirmed on numerous occasions by your Honorable Court, of which *Nogueira v. New York, New Haven & Hartford R. Co.*, 281 U. S. 128 (1930), and *South Chicago Coal & Dock Co. v. Bassett*, 309 U. S. 251 (1940) are examples.

In the *Nogueira* case, the plaintiff was employed by the defendant railroad as one of a gang of freight handlers in the loading of freight into cars on a float which was lying in the East River. The plaintiff was injured while working on the float, and thereafter instituted suit under the Federal Employers' Liability Act (45 U. S. C. A. § 51 et seq.), but the complaint was dismissed on the ground that the Longshoremen's and Harbor Workers' Compensation Act (33 U. S. C. A. § 901 et seq.) applied. This Court, in affirm-

ing this decision, specifically cited the *Nordenholt* case with approval, saying, on page 133:

> "In *State Industrial Commission v. Nordenholt Corporation*, 259 U. S. 263, a longshoreman was injured on a dock while engaged in unloading a vessel. It was decided that in such a case, where the injury took place on an extension of the land, the maritime law did not prescribe the liability and the local law had always governed. The Workmen's Compensation Law of the state was accordingly held to be applicable. The distinction was thus maintained between injuries on land and those which were suffered by persons engaged in maritime employment on a vessel in navigable waters."

In *South Chicago Coal & Dock Co. v. Bassett, supra*, this Court recently stated the following pertinent proposition as settled law:

> " . . . We had held that one engaged as a stevedore in loading a ship lying in port in navigable waters was performing a maritime service and that the rights and liabilities of the parties were matters within the admiralty jurisdiction. *Atlantic Transport Co. v. Imbrovek*, 234 U. S. 52. But the Court had also held that in the case of a longshoreman who was injured on the land, although engaged in unloading a vessel, the local law governed and hence the workmen's compensation law of the State applied. *State Industrial Commission v. Nordenholt Corporation*, 259 U. S. 263. *The distinction had thus been maintained between injuries on land and those suffered by persons engaged in maritime employment on a vessel in navigable waters.*" (pp. 255, 256.) (Italics ours.)

See also *Minnie v. Port Huron Terminal Co.*, 295 U. S. 647, 648 (1935), and *The Admiral Peoples*, 295 U. S. 649, 651 (1935), in which the *Nordenholt* and *Smith* cases were again cited with approval.

Thus the District Court properly granted the respondent's Motion to Dismiss, and the Circuit Court of Appeals properly affirmed that ruling, for, as Judge Bard said in his opinion in this case, after having discussed the *Nordahalt* and *Smith* cases:

> "These decisions would appear to be directly applicable to and controlling of the case at bar." (R. 14.)

Although this Court in *O'Donnell v. Great Lakes Dredge & Dock Co.*, 318 U. S. 36 (1943), has recently held that a seaman, when injured on a pier, may sue the shipowner under the Jones Act,[2] (Act of June 5, 1920, c. 250, § 33, 41 Stat. 1007; 46 U. S. C. A. § 688) that decision has not changed the rights and remedies of a longshoreman as enunciated in the *Nordahalt* and *Smith* cases.

(b) Congress Never Intended to Extend to Stevedores Any Rights Under the Jones Act.

It was never the intention of Congress to accord to longshoremen any rights under the Jones Act, and especially, to longshoremen *injured on a pier*.[3] The petitioner

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[2] The Jones Act (which is Section 33 of The Merchant Marine Act of 1920) provides as follows:

"Any *seaman* who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any *seaman*. . . . all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located." (Italics ours.)

[3] The lower court cases cited by petitioner as authority to the contrary are not in point. In two of them the stevedore was permitted to recover against the vessel or its owner—*The Canada*, 7 Fed. 119 (1881) (lien against the

errs in interpreting the cases of *International Stevedoring Company v. Haverty*, 272 U. S. 50 (1926), and *Uravich v. Jarka Co.*, 282 U. S. 234 (1931), to hold that a longshore-

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vessel for wages) and *Sieracki v. Seas Shipping Co.*, 149 F. (2) 98 (C. C. A. 3rd, 1945) (damages from the shipowner for breach of warranty of seaworthiness). These cases are both irrelevant to the issue in the instant case which concerns solely the liability of the stevedore's employer and not the vessel or its owner. Moreover, certiorari has been granted in *Sieracki v. Seas Shipping Co.*—U. S.—(October Term, 1945, No. 365), and that case is now under review. The third case—*McCahan Sugar Refining Co. v. Staffel*, 41 F. (2d) 651 (C. C. A. 3rd, 1930)—involves an injury to a longshoreman *when on a vessel*. The accident in that case occurred prior to the enactment of the Longshoremen's and Harbor Workers' Act, and the court merely followed the ruling in the *Haverty* case, which is hereinafter fully analyzed on pages 11 to 17, both as to the reason for the decision and the extent thereof.

Although Judge Benedict stated in *The Circassian*, 1 Ben. 209 (1867), that the work done by stevedores was once performed by members of the crew, that was many years ago. Times have changed, and the reason for any rule ceases when the conditions which gave rise to it originally have been dissipated by the changes necessitated by our modern industrial progress. Today stevedores are land-workers, employed by local concerns, and do not share any of the risks or vicissitudes of seamen. Barbers once rendered medical services, but no one today would say that barbers would be included in any statutory group designated as "physicians". Congress in its various enactments has recognized this distinction. For example, it has extended the benefits of the United States Marine hospitals to seamen, but not to stevedores. Stevedores are subject to the Fair Labor Standards Act, but seamen are exempt (29 U. S. C. A. § 213).

[1] This decision is of no particular significance in this case because it concerned the right of a stevedore who met his death in 1926 while working on a German vessel and this Court merely applied the holding of the *Haverty* case—the accident having occurred prior to the enactment of the Longshoremen's and Harbor Workers' Act. Practically

man is a "seaman" within the meaning of the Jones Act, and from that premise to argue that, like the seaman in *O'Donnell v. Great Lakes Dredge & Dock Co., supra*, a longshoreman may maintain an action under the Jones Act, even though his injuries were sustained on a pier.

The circumstances leading to the amendments to Section 24 of the Judicial Code in 1917 (Act of October 6, 1917, c. 97, § 1; 40 Stat. 395; 28 U. S. C. A. § 41 (3)) and in 1922 (Act of June 10, 1922, c. 216, § 1; 42 Stat. 634; 28 U. S. C. A. § 41 (3)), the passage of the Jones Act in 1920, and the enactment of the Longshoremen's and Harbor Workers' Compensation Act in 1927 (Act of March 4, 1927, c. 509; 33 U. S. C. A. § 901 et seq.), as well as the cases construing these statutes, all show that the Jones Act was never intended to apply to longshoremen.

Stevedores and longshoremen, whether injured on a vessel or on a pier, had first received compensation for injuries exclusively through the workmen's compensation statute of the state where employed. In 1917 this Court held that only Congress could legislate concerning rights of stevedores injured on navigable waters and that such injuries were not within the jurisdiction of the state compensation acts. *Southern Pacific Co. v. Jensen*, 244 U. S. 205 (1917). Congress then amended its statute relating to admiralty and maritime jurisdiction by adding a clause referring to rights and remedies under the workmen's compensation law of any state. Act of Oct. 6, 1917, c. 97, § 1; 40 Stat. 395; 28 U. S. C. A. § 41 (3). This amendment was declared unconstitutional in *Knickerbocker Ice Co. v. Stewart*, 253 U. S 149 (1920) The statute was again amended with a different wording. Act of June 10, 1922, c. 216, § 1; 42 Stat. 634; 28 U. S. C. A. § 41 (3). This Court again in 1924 declared this subsequent amendment unconstitutional. *State of Washington v. Dawson & Co.*, 264

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the sole question involved was whether this right was limited to injuries *on American vessels* or extended to injuries *on foreign vessels*.

U. S. 219 (1924); *Industrial Accident Commission v. James Rolph Co.*, 264 U. S. 219 (1924).

Thus from 1917, a longshoreman who was injured on a vessel did not have the benefit of any compensation statute (which remedy was applicable if injured on a pier) nor did he have the benefit of any statute which would deprive his employer in a suit at law of the defense of contributory negligence and assumption of risk, although in 1920 Congress had granted to seamen such additional rights under the Jones Act.

Under these circumstances, this Court, feeling that a stevedore *injured on a vessel* should generally have as much protection as a seaman injured on a vessel, adopted in 1926 an artificial definition of a "seaman" by including in that classification *a stevedore injured when working on a vessel*; and by such "judicial legislation" permitted such a stevedore to recover under the Jones Act for an injury sustained on the vessel. *International Stevedoring Co. v. Haverty*, 272 U. S. 50 (1926).

Mr. Justice Holmes in that decision stated:

> "It is true that for most purposes, as the word is commonly used, stevedores are not 'seamen'. But the words are flexible. . . . We cannot believe that Congress willingly would have allowed the protection to men engaged upon the same maritime duties to vary with the accident of their being employed by a stevedore rather than by the ship." (p. 52.)

Notwithstanding the aforesaid statement of Mr. Justice Holmes, the *Haverty* case not only was criticized as contrary to the intent of Congress [5] but in the following year, less than six months after that decision, Congress enacted the Longshoremen's and Harbor Workers' Compensation Act under which a system of compensation was established for

[5] (1926) 27 Columbia L. Rev. 211; Robinson; *Admiralty* (1939) 320; Robinson, *The Seaman in American Admiralty Law* (1936), 16 Boston L. Rev. 283 at 308.

stevedores injured while working on navigable waters and which, by its very terms, was integrated with local state workmen's compensation acts by providing in section three that it was limited to cases where recovery through workmen's compensation proceedings could "not validly be provided by State law" 33 U. S. C. A. § 903.

It is interesting to observe that prior to its final enactment Congress gave considerable thought as to whether "seamen" *by specific reference* should be included in that statute. See the comments of Mr. Chief Justice Hughes in *South Chicago Coal & Dock Co. v. Bassett*, 309 U. S. 251, 256 (1940):

> ". . . The bill, which became the Longshoremen's and Harbor Workers' Compensation Act, was at one stage amended so as to include a master and members of a crew of a vessel owned by a citizen of the United States. They preferred however to remain outside the compensation provisions and thus to retain the advantages of their election under the Jones Act, and the bill was changed accordingly so as to exempt 'seamen'. Then, in its final passage, the words 'a master or member of a crew' were substituted for 'seamen'." (pp. 256-257.)

Mr. Chief Justice Hughes then pointed out the importance in this change of language:

> "We think that this substitution has an important significance here. For we had held that *longshoremen engaged on a vessel* at a dock in navigable waters, in the work of loading or unloading, were 'seamen.' *International Stevedoring Co. v. Haverty*, 272 U. S. 50; *Northern Coal Co. v. Strand*, 278 U. S. 142. And, also, that such seamen if injured on a vessel in navigable waters, *unlike one injured on land*, could not have the benefit of a state workmen's compensation act *Southern Pacific Co. v. Jensen*, 244 U. S. 205. We think it is clear that Congress in finally adopting the phrase 'a

master or member of a crew' in making its exception, intended to leave entitled to compensation all those various sorts of longshoremen and harbor workers who were performing labor on a vessel and to whom state compensation statutes were inapplicable." (p. 257.) (Italics ours.)

Thus, Congress by the enactment of the Longshoremen's and Harbor Workers' Act, had done exactly what Mr. Justice Holmes was unwilling to believe should be the case, for by that statute Congress varied the protection of maritime workers according to the accident of their employment. The statute, as finally enacted, set up a system of compensation for stevedores who were injured *while working on navigable waters*, and provided that if an employer secured payment of compensation as required by that Act, his liability under the Act should be exclusive and in place of all other liability. Thus, stevedores had finally achieved a system of compensation—irrespective of negligence—for injuries received on navigable waters as well as on land. Since that time a stevedore who is injured on navigable waters has been given compensation exclusively under the Longshoremen's and Harbor Workers' Act. *Noguiera v. New York, New Haven & Hartford R. R. Co.*, 281 U. S. 128 (1930); see also *Doll v. Scott Paper Co.*, 91 F. (2d) 860, 862, (C. C. A. 3rd, 1937); while a stevedore when injured on the pier is limited to recovery under the state workmen's compensation act. *Johnston v. Marshall*, 128 F. (2d) 13 (C. C. A. 9th, 1942), cert. den. 317 U. S. 629 (1942).

It is significant that Congress failed to include seamen in the Longshoremen's and Harbor Workers' Act, for that would have been the natural thing to do if Mr. Justice Holmes had been correct in his statement in the *Haverty* case that Congress intended to include stevedores in the classification of seamen in the Jones Act.[6] Such was the

[6] The Merchant Marine Act of 1920 (Act of June 5, 1920, c. 250; 46 U. S. C. A. §§ 13, 597, 599, 688, 802-806, 808, 812-813, 861-889, 911 921-927, 941, 951-954, 961, 971-975, 981-

opinion of Judge Coleman in *Obrecht-Lynch Corporation v. Clark*, 30 F. (2d) 144, 146, 147 (D. C. Md. 1929):

984), of which the Jones Act is Section 33, expressly refers to both stevedores and seamen. In Section 30 of the Merchant Marine Act of 1920 stevedores are twice mentioned in express terms with reference to liens. Act of June 5, 1920, c. 250, § 30, 41 Stat. 1002, 1004; 46 U. S. C. A. §§ 924, 953. Congress would undoubtedly have mentioned stevedores specifically in Section 33 if it had intended to include them under the Jones Act. This interpretation is further substantiated by a later report of the Judiciary Committee of the Senate in connection with legislation concerning stevedores and state compensation statutes, which report was presented by the late Senator Borah under date of June 6, 1921, and designated Report No. 94, 67th Congress, First Session, and reads, inter alia, as follows:

"*There is a clear distinction between the two classes, seamen and landsmen, who work in or about ships,* who were confused in the Johnson Amendment and in the situation which arose in the Jensen case. The distinctions are based upon the facts of their employment, upon the separate systems of law which have hitherto been applied them, and the character of employers which, in the case of seamen, are ships and shipowners, and in the case of landsmen in the main, independent local contractors. (Italics ours.)

. . . . . .

"The rights of a seaman when injured in the course of his employment are governed not by the common-law of torts, but by a special set of rules which are based upon the difference in the conditions of his employment and those of ordinary land workers. A seaman is entitled to maintenance, care, and cure at the expense of the ship and to his wages to the end of the voyage without regard to the question of negligence. When he reaches port the United States Marine Hospital is open to him without expense on his part until he is cured of his illness or injury. This form of compensation for accidents or illnesses incurred by a seaman is of great antiquity; it marks him off very clearly from the landsman who works on ships in port. The rules which govern his right to recover damages for an injury happening at sea because of negligence or fault are different from those which govern the right of recovery of any other class of workmen. *Shuede v. Zenith S. S. Co.*, 216

". . . Parenthetically, it may be added that, although the Supreme Court in International Stevedoring Co. v. Haverty, 272 U. S. 50, 47 S. Ct. 19, 71 L. Ed. 157, has declared that the word 'seamen', as used in the Merchant Marine Act, includes longshoremen employed by stevedores *while on a vessel,* under the Longshoremen's Act, Congress has apparently expressed an intention to remove such persons from the operation of the earlier act, as thus construed by the Supreme Court, and to place them under the later act" (Italics ours.)

See also *Robinson on Admiralty,* at page 320:

"No inference that Congress now seeks to protect stevedores by the Seamen's Act of 1920 can be drawn, because since 1927 Congress has expressly indicated the protection it intends for 'Longshoremen and Harbor Workers' as distinguished from seamen."

Thus it is evident that Congress never intended to include stevedores within the classification of "seamen" when

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Fed. 566, 570. *The special treatment which seamen have always had under the acts of Congress was recently emphasized by the provision in the merchant marine act of 1920 extending to seamen but not to other maritime workers the same rights of recovery in case of work accidents now enjoyed by interstate railway employees.* (Italics ours.)

. . . .

"*Longshoremen and ship-repair men are land workers subject neither to the peculiar conditions nor to the laws which regulate seamen. They form a part of the labor force of each State exactly as other workmen in the port in which they are employed. They are not migratory but local; their wages, their conditions of living are governed by local standards. They do not in all cases form a special class always employed in this work. The peculiar maritime law, applying to seamen, is inapplicable to their condition and no attempt has been made to apply it to them.*" (Italics ours.)

. . . .

it enacted the Jones Act and that the law as enunciated in the *Nordenholt* and *Smith* cases is still applicable.

(c) The Applicability of the Nordenholt and Smith Cases.

Petitioner argues that since the accident in the *Nordenholt* case occurred in 1918, two years before the Jones Act, that case is not controlling. The petitioner, however, fails to consider that, as we have hereinbefore set forth, this Court has many times *since the enactment of the Jones Act* cited the *Nordenholt* case not only with approval but also as authority for the proposition that stevedores injured on the pier are compensated under the applicable state workmen's compensation act.

While the petitioner admits that the objection raised as to the *Nordenholt* case is not applicable to the case of *T. Smith & Son, Inc. v. Taylor, supra*, which was decided subsequent to the enactment of the Jones Act, his argument that the *Smith* case is inapplicable is summarized in these words:

> "It may be that the Court could and should have considered the effect of the Jones Act, but it is amply clear that it did not do so." (Petitioner's brief, p. 20.)

Although your Honorable Court in its opinion in *Smith & Son v. Taylor, supra* at 182, stated that the stevedoring company conceded "that the state law would apply if he had been injured or killed by falling on the landing-place", the petitioner herein is erroneously presupposing that this Court, when it decided the case, was unaware of the question whether the stevedore in the *Smith* case had a right under the Jones Act similar to that which had been given two years before to the stevedore in the *Haverty* case. From our examination of the record and briefs before this Court in the *Smith* case, we are of the opinion that the Court was well aware of the question of the applicability of the Jones Act, for the applicability of the Jones Act was raised by the plaintiff-in-error not only in the Assignment

of Errors,[7] but when the case was argued before this Court the question was again raised by the plaintiff-in-error[8] and

[7] The fifth assignment of error is as follows:

"As this court has found that the decedent, a stevedore, was engaged in a maritime occupation when he was knocked from the wharf or a skid, an extension of the wharf, into the Mississippi River, where his death occurred from drowning, *this court erred in not holding that a right of action, if any, for his death is governed by the 'Jones Act'* Section 20 of the Act of Congress of March 4, 1915, as amended by the Act of June 5, 1920, C. 250, Par. 20, 41 Stat. 988, 1007 (Comp. Stat. Par. 8337a), *and that such Act is exclusive of all state laws upon the same subject matter.*" (Italics ours.)

[8] Under "Grounds for Invoking this Court's Jurisdiction," the plaintiff-in-error stated on page 3 of its brief:

"The Court below further erred in not finding that the principles applicable to a recovery for a maritime injury are limited to those which the Admiralty law of the United States prescribes, including the applicable section of the Federal Employers' Liability Act, incorporated in maritime law by Act of June 5, 1920, Section 33 (Comp. St. Section 8337a), which statute is exclusive of all State statutes upon the same subject matter, and therefore further erred in taking jurisdiction *rationae materiae* of a suit in which no martime relief is asked."

Under "Cases in Support of this Court's Jurisdiction," the plaintiff-in-error stated on page 6 of its brief as follows:

"Principles applicable to a recovery for a maritime injury must be limited to those which the Admiralty law of the United States prescribes, including the applicable section of the Federal Employers' Liability Act, incorporated in maritime law by Act of June 5, 1920, Section 33 (Comp. St., Section 8337a).

Messel v. Foundation Co., Adv. Sheets, Supreme Court Reporter, July 1, 1927, p. 695.

A stevedore is a seaman within the meaning of Act of March 4, 1915, c. 153; St. 1185, as amended by Sec. 33 of Act of June 5, 1920, c. 250, 40 St. 1007 (Comp.) St. An. Supp. 1923, p. 8337a.

International Stevedoring Co. v. Haverty, Adv. Sheets, Supreme Court Reporter, Nov. 1, 1926, p. 19.

answered by the defendant-in-error.[9] In fact, it seems to us from the record in that case that much of the defense of the stevedore company (which undoubtedly would have been able to prove that it was not negligent, if sued under the Jones Act) and the foundation of its argument to this Court was to the effect that the plaintiff's remedy, if any, was confined to the Jones Act and not to the Louisiana Workmen's Compensation Act. The *Smith* case, therefore, is controlling in this case, notwithstanding the petitioner's attempt to demonstrate otherwise.

The Act of June 5, 1920, supra, is exclusive of all State statutes upon the same subject matter.

Panama R. Co. v. Johnson, 264 U. S., p. 375."

In its Specifications of Error, the plaintiff-in-error made the following statement on page 10 of its brief:

"4th. The Court below erred in not holding that the right of action, if any, in this case is governed by the maritime law, including the Act of March 4, 1915, Section 20, as amended by the Act of June 5, 1920, c. 250, Par. 20, 41 Stat. 988, 1007 (Comp.) Stat., Par. (8337a), and that such act is exclusive of all State laws upon the same subject matter."

While in its argument, the plaintiff-in-error on page 13 of its brief conceded that a stevedore injured upon the land is limited to recovery under the state compensation law (which, we submit, is a correct statement of the law), the plaintiff-in-error did make the following statement in the summation of the ten points of its argument on page 38:

"10th. Any claims that defendant in error might have, therefore, must be confined within the principles applicable to a maritime injury, including the applicable section of the Federal Employer's Liability Act, incorporated in maritime law by Act of June 5, 1920, *Section 33 (Comp. St., Sec. 8337a)* and the Court below erred in assuming jurisdiction at all of this suit, brought solely under the Louisiana Compensation Law, and doubly erred in rendering judgment under the unconstitutional provisions of that law."

[9] In the "Summary of the Argument," the defendant-in-error stated the following proposition on pages 6 and 7 of her brief:

(d) The Case of O'Donnell v. Great Lakes Dredge & Dock Co.

Finally, the plaintiff, after maintaining that he is a seaman within the meaning of the Jones Act, contends that under the *O'Donnell* case and its dictum he is entitled to recover under the Jones Act even though the injury occurred on the pier.

In *O'Donnell v. Great Lakes Dredge & Dock Co.*, 318 U. S. 36 (1943) this Court held that a seaman who was injured while working on the pier and in the course of his employment could maintain an action under the Jones Act. In that case a deckhand had been ordered by the Master to go ashore and assist in repairing, at its connec-

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"4. The 'Jones Act,' Section 20 of the Act of Congress of March 4, 1915, as amended by the Act of June 5, 1920, c. 250, Par. 20, 41 Stat. 988, 1007, is not applicable to the case at bar as said Act *applies only to seamen and stevedores engaged on a ship.*

International Stevedoring Co. v. Haverty, 272 U. S. 50 (Decided Oct. 18, 1926)."

(Italics are those of defendant-in-error.)

The defendant-in-error in answering the plaintiff-in-error's aforesaid Fifth Assignment of Error (supra at page 18) made the following argument on page 23 of her brief:

"The 'Jones Act' is entitled, 'An Act to promote the welfare of American Seamen in the Merchant Marine of the United States. . . .' In the case of *International Stevedoring Co. v. Haverty*, 272 U. S. 50, 47 Supreme Court Reporter, 19, decided Oct. 18, 1926, the plaintiff, a long-shoreman, was injured upon a vessel while *engaged in stowing freight in the hold.* In the cited case, this court held that in said statute the word 'seamen' is to be taken to include stevedores '*engaged as the plaintiff was.*' In the case at bar, the Defendant in Error's husband was not engaged as the plaintiff was in the *Haverty* case, but was engaged solely on the wharf. Therefore, we submit, that, the 'Jones Act' has no application to the case at bar, and the Defendant in Error would have no right to make the election permitted by said Act." (Italics those of defendant-in-error.)

tion with a land pipe, a conduit through which the vessel was unloading the cargo. While he was assisting in repairing the gasket, a heavy counter weight used to support the gasket fell on him causing the injuries of which he complained. This Court allowed the seaman to recover under the Jones Act, holding that "the seaman's right to compensation for injuries received in the course of his employment, is one traditionally cognizable in admiralty" even though the injury occurred on the pier.

The reasoning of the plaintiff in claiming that a stevedore, when injured on the pier, has the right to recover on the authority of the *O'Donnell* case is fallacious in two respects.

First, the plaintiff overlooks the background of the *Haverty* case (which we have fully set forth on pages 11 to 17) as well as the philosophy expressed by Mr. Justice Holmes in that case to the effect that when a stevedore was on board ship doing the work of a seaman he was entitled to maintain a suit under the Jones Act like a seaman. Mr. Justice Holmes did *not* say that a stevedore who was working on the pier was a seaman or was entitled to sue under the Jones Act, and to our knowledge no court has ever held that such a stevedore could maintain an action under the Jones Act. Furthermore the plaintiff has not cited any case in which a stevedore on the pier has been allowed to recover under that act. All the cases which the plaintiff has cited as permitting recovery by a stevedore under the Jones Act are *cases involving injuries sustained on navigable waters and all accidents occurred prior to the enactment of the Longshoremen's and Harbor Workers' Compensation Act.* The *Sieracki* case was not a suit under the Jones Act nor against the stevedore's employer. Nor have we been able to find any case in which a stevedore injured on the pier was allowed such a recovery. On the contrary, this Court in both the *Nordahlt* and *Smith* cases has indicated that the state workmen's compensation acts govern the rights of such a plaintiff, and all cases have so held.

Secondly, the petitioner further overlooks the specific language of Mr. Chief Justice Stone in the *O'Donnell* case to the effect that this Court refused to consider whether a stevedore working on the land could recover under the Jones Act. At the conclusion of his opinion in that case Mr. Chief Justice Stone said:

> "We have no occasion to consider or decide here the question whether a longshoreman, temporarily employed in storing cargo on a vessel, if entitled to recover under the Jones Act for injuries sustained while working on the vessel (compare *International Stevedoring Co. v. Haverty, supra*, with *Nogueira v. N. Y. N. H. & H. R. Co.*, 281 U. S. 128, 137), could recover for an injury received on shore in the circumstances of this case. Compare *State Industrial Commission v. Nordenholt Corp.*, 259 U. S. 263, with *South Chicago Co. v. Bassett*, 309 U. S. 251, 256." (pp. 43, 44.)

Obviously, the *O'Donnell* case was not intended to overrule the *Nordenholt* and *Smith* cases. On the contrary, the citation of the *Nordenholt* case and the other cases indicates to us clearly that the *O'Donnell* case was limited in its application to members of the crew; otherwise there would have been no need for the above quoted dictum. Moreover, any other interpretation of that dictum would do violence to the doctrine of *stare decisis*. The precise question involved in this case has already been determined by this Court in the cases which we have heretofore set forth. They have been the legal guideposts for over twenty years.

Furthermore, to permit the petitioner to proceed with this suit under the Jones Act would amount to "judicial legislation" contrary to the intent of Congress as expressed in said statute and as reiterated by the speedy enactment of the Longshoremen's and Harbor Workers' Compensation Act shortly after the "judicial legislation" in the *Haverty* case.

The word "seamen" as used in the Jones Act did not, and never was intended to include stevedores working on the pier were already covered by state workmen's compensation.

CONCLUSION.

We, therefore, submit that the petitioner's effort to distinguish the *Nordenholt* and *Smith* cases and to have the petitioner held a seaman under the *Haverty* case is without legal justification. The Courts-below properly sustained the respondent's Motion to Dismiss (R. 9, 16, 18, 19). To rule otherwise, after stevedores had achieved a uniform system of recovery under workmen's compensation laws (the state compensation act, if injured on land; the Longshoremen's and Harbor Workers' Act if injured on navigable waters) would result to the disadvantage of stevedores in general, for then the question of what, if anything, a stevedore could recover would depend *in reality* on the place where the injury occurs. Under petitioner's contention, the stevedore if injured on a vessel would always obtain a recovery under the Longshoremen's and Harbor Workers' Act (where recovery is predicated on the injury occurring in the course of employment and not on negligence), but if injured on a pier, he could not recover unless he proved that his employer was negligent. Thus the system of compensation which has been established and in force during the past eighteen years would be destroyed. This system of compensation is a sound one, and there is no reason in principle why this system should be destroyed.

Counsel has observed the trend of decisions extending to seamen, when possible, the benefits of social legislation. However, in situations like this case stevedores would not be benefited if it were to be decided that the Jones Act was applicable when they are injured on a pier. The result would be exactly the opposite. Stevedores already have the benefit of state workmen's compensation statutes—social legislation enacted for their benefit—whereby recov-

ery is predicated on the injury occurring in the course of employment and not on negligence. The petitioner has an adequate remedy for his injury since, as set forth in respondent's Motion to Dismiss, he has already been receiving compensation under The Pennsylvania Workmen's Compensation Act. Act of June 21, 1939, P. L. 520; 77 P. S. § 1 et seq. (R. 5-9). Economically and socially it would be a step backward if this system, so successful through the past decades, were to be destroyed, for then a stevedore, when injured on the pier, would be required to prove negligence before his employer could be held liable.

Neither Congress nor this Court ever intended a longshoreman when injured on a pier to recover damages under the Jones Act. The longshoreman, when so injured, is accorded exclusive relief under the local state workmen's compensation act.

The judgments of the Courts below should be affirmed.

Respectfully submitted,

JOSEPH W. HENDERSON,
GEORGE M. BROOMHEAD,
Counsel for Respondent.

SUPREME COURT OF THE UNITED STATES.

No. 405.—October Term, 1945.

Charles Swanson, Petitioner, vs. Marra Brothers, Inc.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[April 22, 1946.]

Mr. Chief Justice Stone delivered the opinion of the Court.

Petitioner, a longshoreman in the employ of respondent stevedoring company, while on a pier and engaged in loading cargo on a vessel lying alongside in the harbor of Philadelphia, was struck by a life raft which fell from the vessel and injured him. The question for decision, which was reserved in *O'Donnell* v. *Great Lakes Dredge & Dock Co.*, 318 U. S. 36, 43, 44, is whether petitioner may maintain a suit against his employer to recover for the injury, under the Jones Act, 41 Stat. 1007, 46 U. S. C. § 688.

Petitioner, after having sought and received compensation for his injury under the state employers liability act of Pennsylvania, brought the present suit in the District Court for Eastern Pennsylvania "pursuant to the Maritime Law as modified by Section 33 of the Merchant Marine Act of 1920" (the Jones Act). He alleged as the cause of the injury respondent's breach of duty in failing to provide a safe and seaworthy vessel and appliances and a safe place for petitioner to work, and in failing to make the life raft secure and to make adequate inspection of it. The district court dismissed the complaint, holding that there could be no recovery under the Jones Act by one not a seaman for an injury suffered by him while on shore. 57 F. Supp. 456. The Court of Appeals for the Third Circuit affirmed. We granted certiorari, — U. S. —, because of the novelty and importance of the question presented.

The Jones Act provides in pertinent part:

> "Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply. . . ."

The Act thus made applicable to seamen, injured in the course of their employment, the provisions of the Federal Employers' Liability Act, 45 U. S. C. § 51 *et seq.*, which give to railroad employees a right of recovery for injuries resulting from the negligence of their employer, its agents or employees. *Panama R. Co.* v. *Johnson*, 264 U. S. 375; *The Arizona* v. *Anelich*, 298 U. S. 110, 118.

We have held that a stevedore who was injured while storing cargo, and while on but not employed by a vessel lying in navigable waters, was authorized by the Jones Act to bring suit against his employer to recover for injury caused by the employer's negligence. *International Stevedore Co.* v. *Haverty*, 272 U. S. 50; *Uravic* v. *Jarka & Co.*, 282 U. S. 234. It was thought that both the language and the policy of the Act indicated that by taking over principles of recovery already established for the employees of interstate railroads and in making them applicable in the admiralty setting, Congress intended to extend them to stevedores, the employees of an independent contractor, while working on a vessel in navigable waters and while rendering services customarily performed by seamen. *International Stevedore Co.* v. *Haverty*, *supra*, 52; see *O'Donnell* v. *Great Lakes Dredge & Dock Co.*, *supra*, 38, 39.

Petitioner, in urging that the doctrine of the *Haverty* case be extended so as to allow him to recover for his injuries sustained on shore, places his reliance on *O'Donnell* v. *Great Lakes Dredge & Dock Co.*, *supra*. We there held the ship owner liable under the Jones Act, for injuries caused to a seaman by a fellow servant while the former was on shore engaged in repairing a conduit which was a part of the vessel and used for discharging its cargo. But in that case we sustained the recovery because the injured person was a seaman and an employee of the vessel, engaged in the course of his employment as such. An incident of his employment by the vessel as a seaman was his right to maintenance and cure for injuries received in the course of his employment, a cause of action traditionally cognizable in admiralty. *The Osceola*, 189 U. S. 158, 175; *Calmar S. S. Corp.* v. *Taylor*, 303 U. S. 525, 527-528. The jurisdiction of admiralty over such a cause of action depends, not on the place where the injury was inflicted, compare *The Plymouth*, 3 Wall. 20; *Cleveland Terminal*

R. R. v. Steamboat Co., 208 U. S. 316; see *Minnie v. Port Huron*, 295 U. S. 647; *The Admiral Peoples*, 295 U. S. 649, but on the nature of the seaman's service, his status as a member of the vessel, and his relationship as such to the vessel and its operation in navigable waters. *O'Donnell v. Great Lakes Dredge & Dock Co., supra*, 42-43; cf. *Calmar S. S. Corp. v. Taylor, supra*.

Congress, in thus enlarging an admiralty remedy, was exercising its constitutional power to regulate commerce, and to make laws which shall be necessary and proper to carry into execution powers vested by the Constitution in the Government or any department of it, Art. I, § 8, cl. 18, including the judicial power which, by Art. III, § 2, extends "to all Cases of admiralty and maritime Jurisdiction." By § 9 of the Judiciary Act of 1789, 1 Stat. 76, 28 U. S. C. §371, (Third), Congress conferred on the district courts "exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction . . . saving to suitors, in all cases, the right to a common law remedy where the common law is competent to give it. . . ." By the grant of admiralty and maritime jurisdiction in the Judiciary Article, and by § 9 of the Judiciary Act, the national Government took over the traditional body of rules, precepts and practices known to lawyers and legislators as the maritime law, so far as the courts invested with admiralty jurisdiction should accept and apply them. See *O'Donnell v. Great Lakes Dredge & Dock Co., supra*, 40, and cases cited.

We have no occasion to consider here whether Congress, by the Jones Act, undertook to or could give a remedy against the employer for injuries caused by a vessel to his employees, not members of the crew of the vessel, while working on shore. For Congress, by later legislation, has expressed its purpose to restrict the liability of the employer under federal statutes to injuries to his employees occurring on navigable waters or inflicted upon an employee who is either a master or a member of a crew of the vessel, injured in the course of his employment as such.

Within six months after the decision in the *Haverty* case and nearly sixteen years before our decision in the *O'Donnell* case, Congress enacted the Longshoremen's and Harbor Workers' Compensation Act of March 4, 1927, 44 Stat. 1424, 33 U. S. C. 901 *et seq.*, which gave a remedy against employers by way of compensation for disability or death suffered on navigable waters by any employee not a "master or member of a crew of any vessel".

§ 903. The liability of employers to pay the prescribed compensation is, by § 905, made "exclusive and in place of all other liability of such employer to the employee", his legal representative and any other person entitled to recover damages "at law or in admiralty" from the employer for the injury or death. By § 903(a)(1) recovery may be had under the Act only "if recovery for the disability or death through workmen's compensation proceedings may not be validly provided by State law."

The Act both imposes liability on the employer for injuries on navigable waters to employees not including the master or members of a crew of a vessel, and makes the prescribed liability to employees within the coverage of the Act exclusive. The Act thus excludes from its benefits stevedores not members of the crew who are injured on navigable waters from recovering under the Jones Act as interpreted by the *Haverty* case. Those provisions make plain that Congress' own interpretation of the Jones Act is such as to preclude the extension of the doctrine of that case to the specified employees injured on land.

We can hardly suppose that Congress, while explicitly denying a right of recovery under the Jones Act to maritime workers not members of a crew who are injured on board a vessel, either thought that the Jones Act extended to injuries inflicted on shore to employees not members of a crew, see *State Industrial Commission* v. *Nordenholt Corp.*, 259 U. S. 263, 273; *South* v. *Singleton* v. *Taylor*, 276 U. S. 179, or intended that there should be established for such workers injured on shore, by extension of the doctrine of the *Haverty* case, a right of recovery which it at the same time withdrew from such workers when injured on navigable waters. The Senate Judiciary Committee, in recommending the legislation which became the Longshoremen's and Harbor Workers' Compensation Act, expressed doubt as to the constitutional power of Congress to give recovery to such employees injured on shore, saying "These men are mainly employed in loading, unloading, refitting and repairing ships; but it should be remarked that injuries occurring in loading and unloading are not covered unless they occur on the ship or between the wharf and the ship so as to bring them within the maritime jurisdiction of the United States." Sen. Rep. No. 973, 69th Cong., 1st Sess., p. 16. Cf. *Cleveland Terminal R. R.* v. *Steamship Co.*, *supra*; *The Admiral Peoples*, *supra*.

We must take it that the effect of these provisions of the Longshoremen's Act is to confine the benefits of the Jones Act to the members of the crew of a vessel plying in navigable waters and to substitute for the right of recovery recognized by the *Havertу* case only such rights to compensation as are given by the Longshoremen's Act. But since this Act is restricted to compensation for injuries occurring on navigable waters, it excludes from its own terms and from the Jones Act any remedies against the employer for injuries inflicted on shore. The Act leaves the injured employees in such cases to pursue the remedies afforded by the local law, which this Court has often held permits recovery against the employer for injuries inflicted by land torts on his employees who are not members of the crew of a vessel. *State Industrial Commission* v. *Nordenholt Corp.*, *supra*; *Smith & Son* v. *Taylor*, *supra*; cf. *Minnie* v. *Port Huron Co.*, *supra*. And it leaves unaffected the rights of members of the crew of a vessel to recover under the Jones Act when injured while pursuing their maritime employment whether on board, *Warner* v. *Goltra*, 293 U. S. 155; *Norton* v. *Warner Co.*, 321 U. S. 565; see *South Chicago Co.* v. *Bassett*, 309 U. S. 251, 255-6, or on shore, *O'Donnell* v. *Great Lakes Dredge & Dock Co.*, *supra*.

Affirmed.

Mr. Justice JACKSON took no part in the consideration or decision of this case.